

§ 21.54

we find that agency or individual has, without an applicable permit, taken actions that may take Federally listed threatened or endangered species or any bird species protected by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (*see* § 10.13 of subchapter A of this chapter for the list of protected migratory bird species), or otherwise violated Federal regulations.

[75 FR 9316, Mar. 1, 2010]

§ 21.54 Control order for muscovy ducks in the United States.

(a) *Control of muscovy ducks.* Anywhere in the contiguous United States except in Hidalgo, Starr, and Zapata Counties in Texas, and in Alaska, Hawaii, and U.S. territories and possessions, landowners and Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents may, without a Federal permit, remove or destroy muscovy ducks (*Cairina moschata*) (including hybrids of muscovy ducks), or their nests, or eggs at any time when found. Any authorized person may temporarily possess, transport, and dispose of muscovy ducks taken under this order.

(b) *Muscovy ducks in Hidalgo, Starr, and Zapata Counties in Texas.* In these counties, take of muscovy ducks, their nests, and their eggs may be allowed if we issue a depredation permit for the activity.

(c) *Disposal of muscovy ducks.* You may donate muscovy ducks taken under this order to public museums or public institutions for scientific or educational purposes, or you may dispose of them by burying or incinerating them. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

(d) *Other provisions.* (1) You must comply with any State, territorial, or Tribal laws or regulations governing the removal or destruction of muscovy ducks or their nests or eggs.

(2) You may not remove or destroy muscovy ducks or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the au-

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thority of the Endangered Species Act. If you use a firearm to kill muscovy ducks under the provisions of this section, you must use nontoxic shot or nontoxic bullets to do so.

(3) If you operate under this order, you must immediately report the take of any species protected under the Endangered Species Act, or any other bird species protected under the Migratory Bird Treaty Act, to the Fish and Wildlife Service Ecological Services Office for the State or location in which the take occurred.

(4) We reserve the right to suspend or revoke the authority of any agency or individual to undertake muscovy duck control if we find that the agency or individual has undertaken actions that may harm Federally listed threatened or endangered species or are contrary to the provisions of this part.

[75 FR 9321, Mar. 1, 2010]

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation order for light geese.

(a) *What is a conservation order?* A conservation order is a special management action that is needed to control certain wildlife populations when traditional management programs are unsuccessful in preventing overabundance of the population. We are authorizing a conservation order under the authority of the Migratory Bird Treaty Act to reduce and stabilize various light goose populations. The conservation order allows new methods of taking light geese, allows shooting hours for light geese to end one-half hour after sunset, and imposes no daily bag limits for light geese inside or outside the migratory bird hunting season frameworks as described in this section.

(b) *Which waterfowl species are covered by the order?* The conservation order addresses management of greater snow (*Chen caerulescens atlantica*), lesser snow (*C. c. caerulescens*), and Ross's (*C. rossii*) geese that breed, migrate, and winter in North America. The term light geese refers collectively to greater and lesser snow geese and Ross's geese.

(c) *Where can the conservation order be authorized?* The Director can authorize the conservation order in these areas:

(1) The following States that are contained within the boundaries of the Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia.

(2) The following States, or portions of States, that are contained within the boundaries of the Mississippi and Central Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(3) The following States, or portions of States, that are contained within the boundaries of the Pacific Flyway: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(4) Tribal lands within the geographic boundaries in paragraphs (c)(1), (2), and (3) of this section.

(d) *When will the Director authorize the conservation order in a particular Flyway?* (1) The Director may authorize the conservation order for the reduction of greater snow geese for any State or Tribe contained within the Atlantic Flyway by publishing a notice under paragraph (e) of this section when the May Waterfowl Population Status report indicates that the management goal of 500,000 birds has been exceeded and that special conservation actions conducted in Canada are insufficient to reduce the population. Authorization of the conservation order in the U.S. portion of the Atlantic Flyway will occur after the Director determines the degree to which the management goal has been exceeded, the trajectory of population growth, anticipated harvest that would result from implementation of the conservation order, and whether or not similar conservation actions will be conducted in Canada.

(2) The Director may authorize the conservation order for the reduction of mid-continent light geese (lesser snow and Ross's geese) for any State or Tribe contained within the Mississippi and Central Flyways by publishing a notice under paragraph (e) of this section when the May Waterfowl Population Status report indicates that the management goal of 1,600,000 birds (winter index for Mid-continent Population and Western Central Flyway Population, combined) has been exceeded. Authorization of the conservation order in the U.S. portion of the Mississippi and Central Flyways will occur after the Director determines the degree to which the management goal has been exceeded, the trajectory of population growth, anticipated harvest that would result from implementation of the conservation order, and whether or not similar conservation actions will be conducted in Canada.

(3) The Director may authorize a conservation order for the reduction of light geese (lesser snow and Ross's geese) for any State or Tribe contained within the Pacific Flyway by publishing a notice under paragraph (e) of this section when the Director determines that light goose numbers in the western Arctic have exceeded the ability of their breeding habitat to support them.

(e) *How will the conservation order be authorized for a particular Flyway?* The Director will publish a notice in the FEDERAL REGISTER when the conservation order is authorized in a particular Flyway.

(f) *What is required for State/Tribal governments to participate in the conservation order?* When authorized by the Director, any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, light geese under the following conditions:

(1) Activities conducted under the conservation order may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds

and habitat essential to migratory bird populations only and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl (including light goose) and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be used only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in the conservation order may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of the conservation order.

(7) States and Tribes must inform participants of the requirements and conditions of the conservation order that apply.

(8) States and Tribes must keep annual records of activities carried out under the authority of the conservation order. Specifically, information must be collected on:

(i) The number of persons participating in the conservation order;

(ii) The number of days people participated in the conservation order;

(iii) The number of persons who pursued light geese with the aid of a shotgun capable of holding more than three shells;

(iv) The number of persons who pursued light geese with the aid of an electronic call;

(v) The number of persons who pursued light geese during the period one-half hour after sunset;

(vi) The total number of light geese shot and retrieved during the conservation order;

(vii) The number of light geese taken with the aid of an electronic call;

(viii) The number of light geese taken with the fourth, fifth, or sixth shotgun shell;

(ix) The number of light geese taken during the period one-half hour after sunset; and

(x) The number of light geese shot but not retrieved.

(9) The States and Tribes must submit an annual report summarizing activities conducted under the conservation order on or before September 15 of each year, to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP-4107, Arlington, Virginia 22203. Information from Tribes may be incorporated in State reports.

(g) *What is required for persons to participate in the conservation order?* Individual participants in State or Tribal programs covered by the conservation order must comply with the following provisions:

(1) Nothing in the conservation order authorizes the take of light geese contrary to any State or Tribal laws or regulations, and none of the privileges granted under the conservation order may be exercised unless persons acting under the authority of the conservation order possess whatever permit or other authorization(s) may be required for such activities by the State or Tribal government concerned.

(2) Persons who take light geese under the conservation order may not sell or offer for sale those birds or their plumage but may possess, transport, and otherwise properly use them.

(3) Persons acting under the authority of the conservation order must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(4) Persons acting under the authority of the conservation order may take light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

(ii) From or by means, aid, or use of a sinkbox or any other type of low

floating device having a depression affording the person a means of concealment beneath the surface of the water.

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may carry out take activities from any stationary motor vehicle or stationary motor-driven land conveyance.

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled bird.

(v) By the use or aid of live birds as decoys. It is a violation of this paragraph (g) for any person to take light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of light geese.

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of light geese.

(vii) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in §20.11(j-k). Light geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in §20.11(h) and (l). However, nothing in this paragraph (g) prohibits the taking of light geese on or over the following lands or areas that are not otherwise baited areas:

(A) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested crop-

lands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, postharvest manipulation or normal soil stabilization practice as described in §20.11(g), (i), (l), and (m);

(B) From a blind or other place of concealment camouflaged with natural vegetation;

(C) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(D) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-bronze, tungsten-nickel-iron, tungsten-tin-iron, tungsten-nickel-iron-tin, tungsten-iron-copper-nickel, or other shots that are authorized in §20.21(j).

(h) *Can the conservation order be suspended?* The Director reserves the right to suspend or revoke a State's or Tribe's authority under the conservation order if we find that the State or Tribe has not adhered to the terms and conditions specified in this section. The criteria for suspension and revocation are outlined in §13.27 and §13.28 of this subchapter. Upon appeal, final decisions to revoke authority will be made by the Director. Additionally, at such time that the Director determines that a specific population of light geese no longer poses a threat to habitats, agricultural crops, or other interests, or is within Flyway management objectives, the Director may choose to terminate part or all of the conservation order.

(i) *Under what conditions would the conservation order be suspended?* The Director will annually assess the overall impact and effectiveness of the conservation order on each light goose population to ensure compatibility

with long-term conservation of this resource. The Director will suspend the conservation order if at any time evidence clearly demonstrates that an individual light goose population no longer presents a serious threat of injury to the area or areas involved. Suspension by the Director will occur by publication of a notice in the *FEDERAL REGISTER*. However, resumption of growth by the light goose population in question may warrant reinstatement of the conservation order to control the population. The Director will publish a notice of such reinstatement in the *FEDERAL REGISTER*. Depending on the status of individual light goose populations, it is possible that a conservation order may be in effect for one or more light goose populations, but not others.

(j) *What are the information collection requirements?* The information collection requirements associated with the conservation order are described in paragraphs (f)(6) through (9) of this section. Reported information helps us to assess the effectiveness of light geese population control methods and strategies and assess whether or not additional population control methods are needed. The Office of Management and Budget has approved this information collection and assigned OMB Control No. 1018-0103. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. At any time, you may submit comments on these information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., (mailstop ARL SQ-222), Washington, DC 20240.

[73 FR 65951, Nov. 5, 2008; 73 FR 70914, Nov. 24, 2008]

§21.61 Population control of resident Canada geese.

(a) *Which Canada geese are covered by this regulation?* This regulation addresses the population control of resident Canada geese, as defined in §21.3.

(b) *What is the resident Canada goose population control program, and what is its purpose?* The resident Canada goose population control program is a managed take program implemented under

the authority of the Migratory Bird Treaty Act to reduce and stabilize resident Canada goose populations when traditional and otherwise authorized management measures are unsuccessful, not feasible for dealing with, or applicable, in preventing injury to property, agricultural crops, public health, and other interests from resident Canada geese. The Director is authorized to allow States and Tribes to implement a population control, or managed take, program to remedy these injuries. When authorized by the Director, managed take allows additional methods of taking resident Canada geese, allows shooting hours for resident Canada geese to extend to one-half hour after sunset, and removes daily bag limits for resident Canada geese inside or outside the migratory bird hunting season frameworks as described in this section. The intent of the program is to reduce resident Canada goose populations in order to protect personal property and agricultural crops and other interests from injury and to resolve potential concerns about human health. The management and control activities allowed or conducted under the program are intended to relieve or prevent damage and injurious situations. No person should construe this program as opening, reopening, or extending any hunting season contrary to any regulations established under section 3 of the Migratory Bird Treaty Act.

(c) *What areas are eligible to participate in the program?* When approved by the Director, the State and Tribal wildlife agencies of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming may implement the resident Canada goose population control program components in the Atlantic, Central, and Mississippi Flyway portions of these States.